

Board of County Commissioners of Santa Fe County
County Commission Chambers
County Administrative Building
102 Grant Avenue, Second Floor
Santa Fe NM

Special Meeting

September 16, 2014, at 1:00 p.m.

Please turn off cellular phones during the meeting.

Amended Agenda

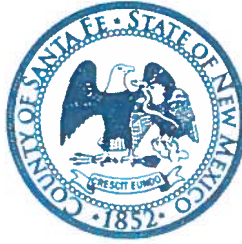
- I. Call to Order**
- II. Roll Call**
- III. Approval of the Agenda (Action Item)**
- IV. Public Hearing on a Proposed Ordinance Titled “An Emergency Interim Development Ordinance Imposing a Twelve Month Moratorium on Development Approvals or the Issuance of Development Permits for Specified Developments of Countywide Impact”**
- V. Consideration and Possible Action on a Proposed Ordinance Titled “An Emergency Interim Development Ordinance Imposing a Twelve Month Moratorium on Development Approvals or the Issuance of Development Permits for Specified Developments of Countywide Impact” (Action Item)**
- VI. Executive Session**
 - a. Threatened or Pending Litigation, as Allowed by Section 10-15-1(H)(7) NMSA 1978.**
 - i. Threatened or Pending Litigation Regarding Resolution No. 2014-87, A Resolution Proposing a Countywide Advisory Question for the 2014 General Election Concerning Public Support for Efforts to Decriminalize Possession of One Ounce or Less of Marijuana.**
 - b. Discussion of the Purchase, Acquisition or Disposal of Real Property or Water Rights, as Allowed by Section 10-15-1(H)(8) NMSA 1978.**
 - i. Acquisition of Pojoaque Valley Schools Athletic Fields.**
- VII. Action on or with Respect to Resolution No. 2014-87, A Resolution Proposing a Countywide Advisory Question for the 2014 General Election Concerning Public Support for Efforts to Decriminalize Possession of One Ounce or Less of Marijuana, Including but not Limited to Authorization of Possible Litigation (Action Item)**
- VIII. Acquisition of Pojoaque Valley Schools Athletic Fields (Action Item)**
- IX. Adjournment (Action Item)**

The County of Santa Fe makes every practical effort to assure that its meetings and programs are accessible to people with disabilities. Individuals with disabilities should contact Santa Fe County at 986-6200 in advance to discuss any special needs (e.g., interpreters for the hearing impaired or readers for the sight impaired).

Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3




Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

Date: September 12, 2014

To: Board of County Commissioners

From: Penny Ellis-Green, Growth Management Director 

Via: Katherine Miller, County Manager
Gregory S. Shaffer, County Attorney

Re: Ordinance 2014 - _____, An Emergency Interim Development Ordinance Imposing a Twelve Month Moratorium on Development Approvals or the Issuance of Development Permits for Specified Developments of Countywide Impact.

Background and Summary:

On August 26, 2014, the Board of County Commissioners gave authorization to publish title and general summary of the attached ordinance entitled, "An Emergency Interim Development Ordinance Imposing a Twelve Month Moratorium on Development Approvals or the Issuance of Development Permits for Specified Developments of Countywide Impact" (Ordinance).

The Sustainable Land Development Code (SLDC) was approved by the BCC on December 10, 2013, by Ordinance No. 2013-6. The SLDC does not go into effect until the zoning map is adopted, which is projected to occur by the end of calendar year 2014.

The Developments of Countywide Impact (DCIs) section of the SLDC, Chapter 11, identified DCIs that merit special regulation due to their potential for far reaching effects on the community. DCIs are developments that would place major demands on public facilities, the County's capital improvement plan and budget, and/or have the potential to affect the environment and public health, safety, and welfare beyond the impacts on immediately neighboring properties. DCIs have the potential to create serious adverse noise, light, odor and vibration; explosive hazards; traffic congestion; and burdens on County emergency response services. Therefore, special regulation of DCIs is necessary:

- to protect the health, safety and welfare of the citizens, residents, and businesses of the County from the potentially harmful or hazardous impacts of DCIs;
- to ensure short and long-term compatibility (both on-site and off-site) of DCIs and the County at large;
- to preserve the quality and sustainability of life, the economy, infrastructure, environment, natural and cultural resources, and natural landscapes; and

- to protect the degradation of air, surface water and groundwater, soils, environmentally sensitive lands and visual and scenic qualities.

The Ordinance would enact a moratorium stopping the County from accepting new or processing existing development applications for twelve months for the following DCIs.

- landfills;
- junkyards; and
- sand and gravel extraction activity requiring blasting.

Staff proposes that these DCIs be subject to a moratorium because (i) they have been adequately defined and (ii) existing regulations are either non-existent or inadequate to meet the special regulatory needs for DCIs identified above. Consequently, processing applications for these DCIs under the existing Land Development Code creates significant risks to the public safety, health, and welfare.

The Ordinance would also prioritize the development of the regulations for these DCIs, which will likely entail significant expenditures and staff time.

Recommendation

Staff recommends approval of the Ordinance.

Exhibits

Exhibit A – Ordinance

Exhibit B – FIR

**THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY**

ORDINANCE NO. 2014 -

**AN EMERGENCY INTERIM DEVELOPMENT ORDINANCE IMPOSING A TWELVE
MONTH MORATORIUM ON DEVELOPMENT APPROVALS OR THE ISSUANCE OF
DEVELOPMENT PERMITS FOR SPECIFIED DEVELOPMENTS OF COUNTYWIDE
IMPACT**

**BE IT ENACTED BY THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE
COUNTY:**

Section 1. Short Title. This Ordinance shall be known as the “DCI Moratorium Ordinance.”

Section 2. Definitions. As used in the DCI Moratorium Ordinance, the following terms have the following meanings:

2.1. “Board” means the Board of County Commissioners of Santa Fe County.

2.2. “County” means Santa Fe County.

2.3. “DCIs” means Developments of Countywide Impact.

2.4. “DCI Regulations” means the regulations to be adopted by the Board and codified in Section 11.3 of the SLDC.

2.5. “Development”, “Development Approval”, “Development Order”, and “Development Permit” have the same meaning as is given those terms in the Land Development Code and SLDC, as applicable. In addition, “Development Permit” expressly includes master plan approvals, development plan approvals, zoning or rezoning approvals, and approvals of mining zones pursuant to Article XI of the Land Development Code.

2.6. “Junkyard” means a place where scrap materials, including automobile bodies and parts, construction debris or metal, are stored or stockpiled for reuse, parts salvage or destruction, and generally, but not always, associated with a junk or scrap business.

2.7. “Landfill” means an area of land upon which solid waste is disposed of in accordance with standards, rules, or orders established by the State of New Mexico.

2.8. “Sand and gravel extraction” means mineral extraction activity for construction materials, including but not limited to, stone, sand, gravel, aggregate, or similar naturally occurring construction materials.

2.9. “SGMP” means the Santa Fe County Sustainable Growth Management Plan, adopted by the Board by Resolution Nos. 2010-210 and 2010-225.

2.10. “SLDC” means the Sustainable Land Development Code, adopted by the Board by Ordinance No. 2013-6.



Section 3. Findings.

3.1. The Board has previously found in Section 11.1 of the SLDC, and hereby confirms, that DCIs have potential for far reaching effects on the community. DCIs are developments that would place major demands on public facilities, the County's capital improvement plan and budget, and/or have the potential to affect the environment and public health, safety, and welfare beyond the impacts on immediately neighboring properties. DCIs have the potential to create serious adverse noise, light, odor and vibration; explosive hazards; traffic congestion; and burdens on County emergency response services. Therefore, special regulation of DCIs is necessary:

3.1.1. to protect the health, safety and welfare of the citizens, residents, and businesses of the County from the potentially harmful or hazardous impacts of DCIs;

3.1.2. to ensure short and long-term compatibility (both on-site and off-site) of DCIs and the County at large;

3.1.3. to preserve the quality and sustainability of life, the economy, infrastructure, environment, natural and cultural resources, and natural landscapes; and

3.1.4. to protect the degradation of air, surface water and groundwater, soils, environmentally sensitive lands and visual and scenic qualities.

3.2. Existing regulations in the Land Development Code for the DCIs identified in Section 4 of the DCI Moratorium Ordinance are either non-existent or inadequate to meet the special regulatory needs identified in Section 3.1.

3.3. Development of the DCI Regulations for the DCIs identified in Section 4 will require:

3.3.1. the identification of monetary and other resources;

3.3.2. the engagement of planning, fiscal, economic, water, environmental and engineering consultants, or attorneys; and

3.3.3. extensive hearings and workshops to solicit public input, evaluation, and recommendations.

3.4. A twelve month moratorium on Development Approvals or Development Permits for DCIs identified in Section 4 is necessary, essential, and reasonable:

3.4.1. to avoid a race of diligence, whereby landowners file and submit DCI development applications during the formulation and public discussion of the DCI Regulations;

3.4.2. to avoid the establishment of non-conforming uses or the need to respond in an ad hoc fashion to specific problems;

3.4.3. to eliminate the need for hasty adoption of permanent controls;

3.4.4. to allow the planning and implementation process to run its full and natural course with widespread citizen input and involvement, public debate, and full consideration of all issues and points of view; and

3.4.5. to allow for the creation of legally and scientifically sound plans, policies and regulations.

3.5. This DCI Moratorium Ordinance constitutes a valid exercise of the County's express and implied zoning authority and police power, consistent with NMSA 1978, § 3-21-1 (granting counties zoning authority, including the power to “regulate and restrict within its jurisdiction” . . . the “location and use of buildings, structures and land for trade, industry, residence or other purposes”) and NMSA 1978, § 4-37-1 (granting counties, among other powers, “those powers necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of any county or its inhabitants”). *Brazos Land, Inc. v. Board of County Commissioners of Rio Arriba County*, 1993-NMCA-013, ¶ 30, 115 N.M. 168 (N.M. Ct. App. 1993) (“Where the Board [of County Commissioners] enacted a moratorium for the purpose of, inter alia, promulgating more stringent waste disposal requirements for subdivisions, and where such requirements and restrictions reasonably advanced a legitimate state interest in the safety and health of the inhabitants of Rio Arriba County, we hold that the Board's moratorium was a valid exercise of its police power and its express and implied authority.”).

Section 4. DCIs Subject to Moratorium. The following DCIs are subject to the moratorium imposed by Section 6:

- 4.1. landfills;
- 4.2. junkyards; and
- 4.3. sand and gravel extraction activity requiring blasting.

Section 5. DCIs Exempt from Moratorium. The following DCIs are exempt from the moratorium imposed by Section 6 either because the Board has determined that existing regulations are acceptable to serve the special regulatory needs of DCIs until the adoption of new DCI Regulations or because the Board has not yet defined the scope of activity requiring regulation as a DCI:

- 5.1. oil and gas drilling and production;
- 5.2. mining and resource extraction (other than sand and gravel extraction);
- 5.3. substantial land alterations;
- 5.4. large-scale feedlots and factory farms; and
- 5.5. sand and gravel extraction that does not require blasting.

As land uses and impacts are further defined, the Board may amend the DCI Moratorium Ordinance to make other DCIs subject to the moratorium imposed by Section 6.

Section 6. Moratorium. During the effective period of the DCI Moratorium Ordinance and except as provided in Section 7:

- 6.1. no new applications for Development Approval or a Development Permit related to a DCI identified in Section 4 shall be accepted by the County;
- 6.2. no existing and filed application for Development Approval or a Development Permit related to a DCI identified in Section 4 shall be further processed or acted upon by the Board or other County committee, commission, department, or official; and
- 6.3. no Development Approval or Development Permit related to a DCI identified in Section 4 shall be issued.

Section 7. DCIs with Vested Rights are Exempt from Moratorium.

7.1. Section 6 shall not apply to Development Permits necessary to implement DCIs identified in Section 4 with vested rights as of the effective date of the DCI Moratorium Ordinance, as determined by the County Land Use Administrator in accordance with New Mexico law. To have vested rights, generally (i) there must be prior approval by the County for use of buildings or land for the DCI and (ii) there must be a substantial change in position in reliance on the approval.

7.2. Any person aggrieved by the Land Use Administrator's decision with respect to whether a DCI identified in Section 4 has vested rights may appeal that decision in accordance with the appeal provisions of the Land Development Code or SLDC, as applicable. Any person aggrieved by the Board's decision on appeal may appeal the Board's decision to District Court, pursuant to NMSA 1978, § 3-21-9 and § 39-3-1.1.

Section 8. Prioritization of DCI Regulations for DCIs Identified in Section 4.

The County Manager is directed to require County staff to immediately begin the process to engage the professionals necessary to develop the DCI Regulations for the DCIs identified in Section 4 and to take such other action as is necessary to expeditiously develop such regulations, any other necessary amendments to the SLDC or SGMP, and any other ordinances or documents necessary to implement the DCI Regulations for the DCIs identified in Section 4 or carry out the purposes of this DCI Moratorium Ordinance.

Section 9. Repeal of Inconsistent Ordinances. All ordinances or parts of any ordinances that irreconcilably conflict with this DCI Moratorium Ordinance are hereby repealed to the extent of such conflict.

Section 10. Severability. If a provision of the DCI Moratorium Ordinance or its application to any person or circumstance is held by a court of competent jurisdiction to be invalid, the invalidity does not affect other provisions or applications of the DCI Moratorium Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of the DCI Moratorium Ordinance are severable.

Section 11. Effective Period.

11.1. Due to the emergency declared in Section 3.2, it is necessary for the protection of the public health and safety of the County that this DCI Moratorium Ordinance take effect immediately upon recordation. Should a court of competent jurisdiction determine that it has the authority to question the Board's declaration of emergency and that emergency conditions did not exist justifying the immediate efficacy of the DCI Moratorium Ordinance, the DCI Moratorium Ordinance shall take effect on the first date otherwise allowed by law.

11.2. The DCI Moratorium Ordinance is repealed on September 16, 2015; provided that the Board may extend the effective period for additional reasonable periods of time if, in its legislative discretion, such extension is warranted.

PASSED, APPROVED AND ADOPTED THIS _____ DAY OF _____, 2014.

THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY

Daniel Mayfield, Chair

ATTEST:

Geraldine Salazar, County Clerk

APPROVED AS TO FORM:

Gregory S. Shaffer, County Attorney

AUGUST 20, 2014 DRAFT

SANTA FE COUNTY

FISCAL IMPACT REPORT (FIR)

This Fiscal Impact Report (FIR) shall be completed for each proposed ordinance or resolution as to its direct impact upon the County's operating budget and is intended for use by staff of the Human Resources and Finance Divisions, the County Manager and the governing body of Santa Fe County. Ordinances/resolutions with a fiscal impact must be reviewed by the Finance Division Director or the Budget Administrator. Ordinances/resolutions with proposed staffing increases must be reviewed and approved by the Human Resources staff and approved by the County Manager before presentation to the Board of County Commissioners (BCC).

Please refer to the instructions on how to complete this form.

Section A. General Information

☒ Ordinance ☐ Resolution ☐ Other

A single FIR may be used for related ordinances and/or resolutions.

Short Title(s):

DCI Moratorium Ordinance

Reviewing Division(s):

Growth Management and Legal

Person Completing FIR:

Gregory S. Shaffer

Date: 9/12/2014

Phone: 505.986.6279

Section B. Summary

Briefly explain the purpose and major provisions of the ordinance/resolution.

The DCI Moratorium Ordinance would impose a twelve month moratorium on development approvals or the issuance of development permits for the following developments of countywide impact (DCIs): landfills, junkyards, and sand and gravel extraction activity requiring blasting. It would also prioritize the development of the regulations regarding these DCIs. In addition to the time of existing staff, this will entail the procurement and retention of planning, fiscal, economic, water, environmental and engineer consultants, or attorneys.

Section C. Fiscal Impact

NOTE: Financial information on this FIR does not directly translate into a Santa Fe County budget increase.

- a. The item must be presented to the Finance Division for analysis and recommendation as a potential request to increase the existing budget for the county.



- b. Detailed budget information must be included, such as funding source, amounts and justification.
- c. Detailed salary and benefit for new full-time equivalents (FTE's) must be included. The request must be approved by the staff of the Human Resources Division for each new FTE request.

1. Projected Expenditures:

- a. Indicate Fiscal Year(s) affected – the current fiscal year and the following three fiscal years, where applicable
- b. Indicate: "A" if current budget and level of staffing will absorb the costs
"N" if new, additional, or increased budget or staffing will be required
- c. Indicate: "R" if recurring annual costs
Indicate: "NR" if one-time, non-recurring costs, such as start-up, contract or equipment costs
- d. Attach additional projection schedules if four years does not adequately project revenue and costs patterns
- e. Costs may be netted or show as an offset if some cost savings are projected (please explain further in Section 3 Narrative)
- f. Please provide additional fiscal impact information for years 3 and 4 in the Expenditure/Revenue Narrative.
- g. This form allows for information related to two fiscal years. Please note *info* relation to other fiscal years in narrative 3.

Exp. Classification	FY 15	"A" or "N"	"R" or "NR"	FY 16	"A" or "N"	"R" or "NR"	Funds affected
Salary and Benefits							Select or type...
Maintenance							Select or type...
Other Operating							Select or type...
Contractual Services	\$730,075	N	R	\$243,358	N	NR	General
Capital Requirements							Select or type...
Total	\$730,075			\$243,358			

*Any indication that additional staffing would be required must be reviewed and approved in advance by the County Manager by attached memo before release of FIR to the Board of County Commissioners (BCC).

** For salary and benefit information contact the Finance Division, or attach the New FTE Request form to provide necessary information.

2. Revenue Sources:

- a. To indicate new revenues and/or
- b. Required for costs for which new expenditure budget is proposed above in item 1.

c. Please provide additional fiscal impact information for years 3 and 4 in the Expenditure/Revenue Narrative.

Type of Revenue	FY 2015	"R" or "NR"	FY 2016	"R" or "NR"	Funds Affected
General	\$730,075	NR	\$243,358	NR	General
Total	\$730,075		\$243,358		

3. Expenditure/Revenue Narrative:

Explain expenditures, grant match requirements, justify salary and benefit costs for new FTE request, detail capital and operating uses, etc. Explain revenue source(s). Include revenue calculations, grant(s) available, anticipated date of receipt of revenues/grants, etc. (Attach supplemental page, if necessary). Also, provide expanded information for fiscal year three and four impact for both revenue and expenditures.

Development of the DCI regulations for landfills, junkyards, and sand and gravel extraction activity requiring blasting will entail not insubstantial expenditures. By way of comparison, development of Santa Fe County's Oil and Gas Ordinance cost \$973,434 in contractual service expenditures (in addition to staff time). We have used this figure to estimate the cost of developing the regulations for the DCIs subject to the moratorium for the following reasons. Lessons learned through the development of that ordinance should allow the new regulations to be developed at a lower cost. However, any resulting cost savings will be used up by the fact that we will be developing regulations for three separate land uses (as opposed to one). The Legal Department has consulted with the Finance Department prior to submission of this FIR. The Finance Department reports that legal contingency funds are available to fund the necessary contracts, to the extent they cannot be absorbed from already budgeted resources in the Growth Management Department and Legal Department.

Section D. General Narrative

1. Conflicts:

Does this proposed ordinance/resolution duplicate/conflict with/companion to/relate to any County code, approved ordinance or resolution, other adopted policies and legislation? Include details of county adopted ordinances/resolutions and dates. Summarize the relationships, conflicts or overlaps.

This ordinance relates to the Sustainable Land Development Code, Chapter 11 of which identifies DCIs -- including landfills, junkyards, and sand and gravel extraction activity requiring blasting -- requiring special regulation due to their potential for far reaching effects on the community.

2. Consequences of Not Enacting This Ordinance/Resolution:

Are there consequences of not enacting this ordinance/resolution? If so, describe.

Applications for landfills, junkyards, and sand and gravel extraction activity requiring blasting will be processed under inadequate regulations, thereby creating risks to public health, safety, and the general welfare.

3. Technical Issues:

Are there incorrect citations of law, drafting errors or other problems? Are there any amendments that should be considered? Are there any other alternatives which should be considered? If so, describe.

N/A

4. Community Impact:

Briefly describe the major positive or negative effects the ordinance/resolution might have on the community including, but not limited to, businesses, neighborhoods, families, children and youth, social service providers and other institutions such as schools, churches, etc.

The DCI Moratorium Ordinance projects the public health, safety, and general welfare by preventing landfills, junkyards, and sand and gravel extraction activity requiring blasting from being processed under non-existent or inadequate regulations.

 No file attached

 No file attached

 No file attached

